

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARSHALL E. BLOOMFIELD,	:
	:
Petitioner,	:
	:
-against-	:
	:
DERMOT MACSHANE,	:
	:
Respondent,	:
	:
-and-	:
	:
SERGEANT'S BENEVOLENT ASSOCIATION	:
ANNUITY FUND; THE CITY OF NEW YORK	:
POLICE PENSION FUND AND THE FUND	:
OFFICE OF LOCAL 580 OF ARCHITECTURAL	:
AND ORNAMENTAL IRON WORKERS,	:
	:
Respondents.	:
-----X	

Civil Action No.:
07 Civ 3934 (RJH)

**Reply Affirmation In
Support of Motion to
Dismiss**

JOHN STACKPOLE GROARKE, an attorney duly admitted to practice in the United States District Court, Southern District of New York, hereby affirms the following under the penalties of perjury:

1. I am an associate with the firm COLLERAN O'HARA & MILLS LLP, attorneys for Respondent, THE FUND OFFICE OF LOCAL 580 OF ARCHITECTURAL AND ORNAMENTAL IRON WORKERS (hereinafter "LOCAL 580 FUND OFFICE"), and as such, I am fully familiar with the facts and circumstances herein.

2. This Affirmation is submitted in reply to the Petitioner, MARSHALL E. BLOOMFIELD ("BLOOMFIELD or Petitioner"), *Memorandum of Law In Further Support of his Motion to Remand and In Opposition to Respondent's Motion For Dismissal*, ("Memorandum of Law In Opposition"), dated July 18, 2007, and in further support of LOCAL 580 FUND OFFICE's motion to dismiss.

3. BLOOMFIELD'S Memorandum of Law In Opposition lacks any legal basis and/or arguments in opposition to the merits of the motion to dismiss. The arguments raised by Bloomfield's Memorandum of Law In Opposition concern the removal of the within action.

4. LOCAL 580 FUND OFFICE'S motion to dismiss should be granted because BLOOMFIELD's Petition seeking an order directing payment of all monies held by the LOCAL 580 FUND OFFICE from a lien that the Petitioner claims to have against the pension benefits held in trust by the LOCAL 580 FUND OFFICE for Respondent DERMOT MACSHANE, is barred by ERISA.

5. Any attempt by the Petitioner to now argue that he never intended to seek relief against the LOCAL 580 FUND OFFICE is completely contrary to the allegations and the claim for relief contained in his Verified Petition against the LOCAL 580 FUND OFFICE.

6. BLOOMFIELD'S claim for equitable relief is stated in the Verified Petition as follows: "against the Respondent, Fund Office of Local 580 of Architectural and Ornamental Iron Workers, an Order directing the payment of all monies in their possession, constituting personal property of Respondent-Judgment Debtor to which a security interest has attached, up to the sum of \$31,855.89 in satisfaction of said lien; and" See GROARKE DECLARATION at Exhibit "D" at 5.

7. Immediately prior to the commencement of the instant action, BLOOMFIELD became aware that the LOCAL 580 FUND OFFICE was maintaining an account under the title Local 580 Annuity Fund for participant DERMOT MACSHANE in the amount at the time \$59,804.80. See GROARKE DECLARATION at Exhibit "A" and Paragraph 14 of the Verified Petition states:

Respondent, The Fund Office of Local 580 of Architectural and Ornamental Iron Workers is a necessary party hereto, in that it is in

possession of property of Respondent-Judgment Debtor in an amount believed to be, upon information and belief, amounting to \$59,804.80 (see EXHIBIT F annexed). Upon information and belief, said Respondent claims that such property constitutes exempt property as that term is defined by CPLR §5205.

8. It is evident from the Verified Petition, that the equitable relief sought by the Petitioner, for an Order directing payment from the LOCAL 580 FUND OFFICE, was intended to satisfy the Petitioners outstanding debt for unpaid attorney fees in the amount of \$31,855.89 from the assets of the Respondent DERMOT MACSHANE's Local 580 Annuity Fund participant account, which at the time of commencement of this action had a balance of \$59,804.80.

9. Any attempt by the Petitioner to recast the within action as anything other than a collection proceeding against the Local 580 Annuity Fund account maintained by the LOCAL 580 FUND OFFICE misleads this Court.

10. The LOCAL 580 FUND OFFICE acted prudently when it was served with BLOOMFIELD'S Order to Show Cause and Verified Petition demanding an order directing payment of all monies held by the LOCAL 580 FUND OFFICE from a lien that the Petitioner claims to have against the pension benefits held in trust by the LOCAL 580 FUND OFFICE for the benefit of Respondent DERMOT MACSHANE.

11. As the United States Supreme Court stated in Guidry v. Sheet Metal Workers Nat'l Pension Fund, 493 U.S. 365, 376-377, 107 L. Ed. 2d 782, 110 S. Ct. 680 (1990), "As a general matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text. The creation of such exceptions, in our view, would be especially problematic in the context of an anti-garnishment provision. Such a provision acts, by definition, to hinder the collection of a lawful debt."

12. ERISA's anti-alienation provision, Section 206(d)(1), bars a state law claim seeking equitable relief against an ERISA pension plan from directing the fund to pay monies being held in trust to a judgment creditor from a participant's account.

13. Therefore, the Respondent, THE FUND OFFICE OF LOCAL 580 OF ARCHITECTURAL AND ORNAMENTAL IRON WORKERS, respectfully request that this Court grant its motion dismissing BLOOMFIELD's Verified Petition.

Dated: August 2, 2007

Respectfully submitted,

COLLERAN, O'HARA & MILLS L.L.P.



By: JOHN STACKPOLE GROARKE (JG 9031)

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